

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Charter Communications VI, LLC	)	NAL/Acct. No. 200112000001
Burlington, Colorado	)	File Number EB-00-DV-151
	)	Physical System ID 006725
	)	FRN Number 0006-6303-69

**FORFEITURE ORDER**

**Adopted: August 30, 2002**

**Released: September 4, 2002**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of twenty thousand dollars (\$20,000) to Charter Communications VI, LLC ("Charter") for willful or repeated violations of Sections 76.605(a)(12), 76.611(a), and 76.613(c) of the Commission's Rules ("Rules").<sup>1</sup> The noted violations involve Charter's failure to comply with the Commission's signal leakage standards and failure to comply with a cease operations order.

2. On April 16, 2001, the Commission's former Cable Services Bureau issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of twenty thousand dollars (\$20,000) to Charter for the noted violations.<sup>2</sup> Charter filed a response to the NAL on May 16, 2001.

**II. BACKGROUND**

3. On April 17, 2000, the Commission's Denver, Colorado Field Office ("Denver Office") conducted a routine examination of Charter's system cable plant to identify leaks and determine compliance with the basic signal leakage criteria. Fourteen leaks were measured, which ranged from 83  $\mu\text{V}/\text{m}$  to 2,219  $\mu\text{V}/\text{m}$ . The system's Cumulative Leakage Index ("CLI") was found to have a CLI ( $10 \log I_{\infty}$ ) in excess of 64.<sup>3</sup> Inspection of the headend the same day also revealed violation of several record-keeping requirements. At the inspection, by direction of the District Director of the Denver Office, an agent from the Denver Office orally instructed the General Manager of the system to cease operation on aeronautical band frequencies until the leaks were repaired and the system complied with the basic signal leakage criteria. On April 18, 2000, the oral order was followed by a written order pursuant to Section

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<sup>1</sup> 47 C.F.R. §§ 76.605(a)(12), 76.611(a), and 76.613(c).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200112000001 (Cable Services Bureau, released April 16, 2001).

<sup>3</sup> The calculated CLI is 68.1. A maximum CLI of 64 is the basic signal leakage performance criteria of Section 76.611(a)(1) of the Rules. Leakage that exceeds this level is deemed to pose a serious threat to air traffic safety communications.

76.613(c) of the Rules from the District Director of the Denver Office delivered by fax at 9:30 a.m. Also on April 18, 2000, the agent returned to the system in Burlington and determined that two of the largest leaks had not been repaired. At approximately 3:15 p.m., the District Director spoke to the system General Manager in response to a telephone call received earlier from the General Manager. During the call, the District Director ascertained that the system had neither been shut down nor had the power level on the aeronautical frequencies been reduced. The agent in Burlington determined that the system did not cease operation on frequencies in the aeronautical band until approximately 3:20 p.m.

4. On April 24, 2000, Charter requested authority from the District Director of the Denver Office to operate with full power on channel 16 for testing purposes, and on April 25, 2000, Charter advised the District Director of the Denver Office that the system was in compliance with the leakage restrictions and requested permission to resume normal operations. The Denver Office granted permission. On April 27, 2000, an agent from the Denver Office conducted a follow-up examination of the system and identified 23 leaks. The system did have, however, a CLI less than 64 at that time. The Denver Office issued an Official Notice of Violation on June 7, 2000 for violations of Sections 76.301, 76.302, 76.305, 76.605, 76.613, and 76.615 of the Rules. Charter responded on June 22, 2000. In its reply, Charter stated that the leakage violations had been corrected and that system personnel acted as quickly as practicable to reduce power in the aeronautical frequency bands. On April 16, 2001, the former Cable Services Bureau issued the subject *NAL* in the amount of \$20,000 to Charter for failure to comply with the Commission's cable signal leakage standards and failure to comply with a cease operations order in willful or repeated violation of Sections 76.605(a)(12), 76.611(a), and 76.613(c) of the Rules.

5. In its response to the *NAL*, Charter requests reduction of the forfeiture amount. Charter states that it acquired the system only five months before the agent's inspection and that at the time of the acquisition, the system was 30 years old and was "badly deteriorated" and in need of repair. Charter also states that when it acquired the system, only one technician, a former employee of the system's previous owner, had been assigned to monitor and repair signal leaks at the system. Charter adds that, "shortly" after it acquired the system, it instructed this technician concerning Charter's signal leakage compliance program. Further, Charter argues that once the agent identified the leaks, Charter made substantial efforts to repair the leaks immediately and to repair additional leaks it discovered in the repair process. Specifically, Charter asserts that after the agent's inspection on April 17, 2000, it arranged for assistance overnight and by the next day it had assembled a crew of technicians to detect and repair the leaks. In addition, Charter contends that within one day of the inspection, it had repaired 10 of the 14 leaks identified by the agent and that it repaired the remaining four leaks by April 20, 2000. Charter asserts that by April 21, 2000, it had repaired over 130 additional leaks identified by its technicians and continued to work on other leaks uncovered by its technicians. Charter states that there is a discrepancy in the CLI calculated by Charter, 64.29, and the amount stated in the *NAL*, 68.1.

6. With respect to the forfeiture proposed for failure to comply with the cease operations order, Charter argues that there was a "misunderstanding about instructions" regarding the time for reducing power levels in the aeronautical frequencies. Specifically, Charter states that there were four employees involved in interacting with the agent at the conclusion of the inspection, and that these employees understood that the system did not need to cease operations until receipt of a written order. Further, Charter argues that although the order to cease operations was sent by fax at 9:30 a.m. on April 18, 2000, the order was not delivered to Charter employees who were attending a conference at a hotel, until approximately 1:00 p.m. that day. Charter asserts that upon receipt of the written order it attempted to comply with the FCC's instructions immediately. Charter also states that it has implemented several

long-term measures to eliminate signal leakage and compliance issues in the future. Finally, Charter argues that although the *NAL* lists 23 signal leaks on the system identified by the agent on April 27, 2000 that exceeded the threshold limit of 20 micro-volts, Charter was fulfilling its regulatory requirements with a monitoring and maintenance program that yielded a compliant CLI test result.

### III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”)<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). In examining Charter’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup>

8. We disagree that the forfeiture amount in this case should be reduced. Notwithstanding the condition of the system at the time of Charter’s acquisition, it was responsible for ensuring compliance with our rules once it acquired the system.<sup>7</sup> Moreover, we reject Charter’s assertion that the forfeiture should be reduced because the violations resulted from the lapse of an employee it inherited from the previous owner who had been tasked with monitoring and repairing leaks, as licensees are responsible for the acts or omissions of their employees.<sup>8</sup> Further, Charter’s remedial efforts to correct the violation are not a mitigating factor.<sup>9</sup> With respect to Charter’s assertion that there was a discrepancy in the amount of the CLI calculated by Charter and the amount stated in the *NAL*, we do not find that this provides a basis for reduction of the forfeiture amount. Specifically, there is no dispute that at the time of the April 17, 2000 inspection, the system’s CLI was in excess of 64, in violation of Section 76.611(a)(1) of the Commission’s Rules.

9. Charter contends that after the inspection and issuance of the verbal order to cease operation on April 17, 2000, it was unclear as to the time frame for reducing power, and that its employees understood that the system did not need to cease operations until receipt of a written order. However, Charter did not immediately cease operations even after receipt of the written order. Specifically, the Denver Office faxed the written order to Charter on April 18, 2000 at 9:30 a.m., yet the system did not cease operations until approximately 3:20 p.m. more than two hours after Charter claims to have received the order, and more than several hours after the order was sent by the Denver Office. Therefore, Charter’s operation of the system after receipt of the verbal and written cease operations order

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<sup>4</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> *Sitka Broadcasting Co., Inc.*, 70 FCC Rcd 2375, 2378 (1979) (indicating that licensees are expected to know and comply with the Commission’s rules).

<sup>8</sup> *MTD, Inc.*, 6 FCC Rcd 34 (1991); *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361 (1972).

<sup>9</sup> *Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973) (“[L]icensees will not be excused for past violations by reason of subsequent corrective action.”).

violated Section 76.613(c). Regarding Charter's assertion that it did not receive the FCC's written order until 1:00 p.m., we believe that in light of the circumstance that it should have had procedures in place to ensure that it was able to more quickly comply with the FCC's instruction. Finally, while Charter argues that on April 27, 2000, it was meeting its regulatory requirements with a monitoring and maintenance program that resulted in a CLI of less than 64, it admits that each of the 23 signal leaks identified on April 27, 2000 exceeded the threshold limit of 20 micro-volts. We therefore find that Charter violated Section 76.605(a)(12) of the Rules.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>10</sup> Charter **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for failure to comply with the Commission's signal leakage standards and failure to comply with a cease operations order in willful or repeated violation of Sections 76.605(a)(12), 76.611(a), and 76.613(c) of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>11</sup> Payment shall be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200112000001 and FRN 0006-6303-69. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>12</sup>

12. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail, Return Receipt Requested, to Charter Communications VI, LLC, Suite 100, 12444 Powerscourt Drive,

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<sup>10</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>11</sup> 47 U.S.C. § 504(a).

<sup>12</sup> See 47 C.F.R. § 1.1914.

St. Louis, Missouri 63131 and to its counsel, Paul Glist, Esq., Cole, Raywid & Braverman, L.L.P., 1919 Pennsylvania Avenue, N.W., Suite 200, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau